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Received assent on 17th July 1951.

GOVERNMENT OF INDIA, MINISTRY OF LAW.

THE REPRESENTATION OF THE PEOPLE ACT, 1951.

(XLIII OF 1951).

AN

ACT

to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt and illegal practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

BE it enacted by Parliament as follows :—

PART I

PRELIMINARY.

1. **Short title.**—This Act may be called the Representation of the People Act, 1951.

2. **Interpretation.**—(1) In this Act, unless the context otherwise requires,—

(*a*) each of the expressions defined in section 2 or sub-section (1) of section 27 of the Representation of the People Act, 1950 (XLIII of 1950), but not defined in this Act, shall have the same meaning as in that Act ;

(*b*) "appropriate authority" means, in relation to an election to the House of the People or the Council of States or to a primary election, the Central Government, and in relation to an election to the Legislative Assembly or the Legislative Council of a State, the State Government ;

(*c*) "corrupt practice" means any of the practices specified in section 123 or section 124 ;

(*d*) "election" means an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State other than the State of Jammu and Kashmir and includes a primary election ;

(*e*) "elector", in relation to a constituency, means a person whose name is for the time being entered in the electoral roll of that constituency ;

(*f*) "illegal practice" means any of the practices specified in section 125 ;

(*g*) "prescribed" means prescribed by rules made under this Act ;

(*h*) "primary election" means an election for the purpose of constituting or reconstituting an electoral college under section 27A of the Representation of the People Act, 1950 (XLIII of 1950) for a scheduled Part C State or for the purpose of filling any casual vacancy in the seat of a member of such electoral college ;

(*i*) "Scheduled Castes" and "Scheduled Tribes" in relation to a Part C State, mean respectively the castes specified in the Sixth Schedule and the tribes specified in the Seventh Schedule to the Representation of the People Act, 1950 (XLIII of 1950) in relation to that State ;

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(*j*) "scheduled Part C State" means any Part C State or group of such States for the time being specified in the first column of the Fifth Schedule to the Representation of the People Act, 1950 (XLIII of 1950);

(*k*) "sign" in relation to a person who is unable to write his name means authenticate in such manner as may be prescribed;

(*l*) "Tribunal" means a tribunal appointed by the Election Commission under section 86.

(2) For the purposes of this Act, a Council of States constituency, a Parliamentary constituency, an Assembly constituency, a Council constituency, a local authorities' constituency, a graduates' constituency and a teachers' constituency shall each be treated as a constituency of a different class.

(3) Any requirement under this Act that a notification, order, rule, declaration, notice or list issued or made by any authority shall be published in the official Gazette, shall, unless otherwise expressly provided in this Act, be construed as a requirement that the notification, order, rule, declaration, notice or list shall—

(*a*) where it is issued or made by the Central Government, be published in the *Gazette of India*.

(*b*) where it is issued or made by a State Government be published in the official Gazette of the State; and

(*c*) where it is issued or made by any other authority, be published in the *Gazette of India* if it relates to an election to, or membership of, either House of Parliament or to a primary election, and in the Official Gazette of the State if it relates to an election to, or membership of, the House or either House of the Legislature of a State.

(4) Where, under any of the provisions of this Act, anything is to be prescribed, different provisions may be made for different cases or classes of cases.

(5) Any reference in this Act to a law which is not in force in a Part B State shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

(6) Any reference in this Act to a High Court or to the Judge of a High Court shall, in relation to a Part C State having a Court of the Judicial Commissioner, be construed as a reference to the said Court of the Judicial Commissioner or to the Judicial Commissioner or any Additional Judicial Commissioner, as the case may be.

(7) Any reference in this Act to the Legislative Council of a State shall be construed as not including a reference to the Coorg Legislative Council.

PART II

QUALIFICATIONS AND DISQUALIFICATIONS FOR MEMBERSHIP

CHAPTER I

Qualifications for membership of Parliament.

3. Qualifications for membership of the Council of States.—(1) A person shall not be qualified to be chosen as a representative of any Part A or Part B State (other than the State of Jammu and Kashmir) in the Council of States unless he is an elector for a Parliamentary constituency in that State.

(2) A person shall not be qualified to be chosen as a representative of the States of Ajmer and Coorg or of the States of Manipur and Tripura in the Council of States unless he is an elector for any Parliamentary constituency in the State in which the election of such representative is to be held.

(3) Save as otherwise provided in sub-section (2), a person shall not be qualified to be chosen as a representative of any Part C State or group of such States in the Council of States unless he is an elector for a Parliamentary constituency in that State or in any of the States in that group, as the case may be.

4. Qualifications for membership of the House of the People.—A person shall not be qualified to be chosen to fill a seat in the House of the People, other than a seat allotted to the State of Jammu and Kashmir or to the Andaman and Nicobar Islands, unless—

(*a*) in the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency ;

(*b*) in the case of a seat reserved for the Scheduled Tribes in any State (other than those in the autonomous districts of Assam), he is a member of any of the Scheduled Tribes, whether of that State or of any other State (excluding the tribal areas of Assam), and is an elector for any Parliamentary constituency ;

(*c*) in the case of a seat reserved for the Scheduled Tribes in the autonomous districts of Assam, he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency in which such seat is reserved or for any other Parliamentary constituency comprising any such autonomous district ; and

(*d*) in the case of any other seat, he is an elector for any Parliamentary constituency.

CHAPTER II

Qualifications for membership of State Legislatures.

5. Qualifications for membership of a Legislative Assembly.—A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless—

(*a*) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State ;

(*b*) in the case of a seat reserved for an autonomous district of Assam, other than a seat the constituency for which comprises the cantonment and municipality of Shillong, he is a member of a Scheduled Tribe of that district and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district ; and

(*c*) in the case of any other seat, he is an elector for any Assembly constituency in that State.

6. Qualifications for membership of a Legislative Council.—(1) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly constituency in that State.

(2) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by nomination by the Governor or the Rajpramukh, as the case may be, unless he is ordinarily resident in the State.

CHAPTER III

Disqualifications

7. Disqualifications for membership of Parliament or of a State Legislature.—A person shall be disqualified for being chosen as, and for being, a member of

either House of Parliament or of the Legislative Assembly or Legislative Council of a State—

(*a*) if, whether before or after the commencement of the Constitution, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice which has been declared by section 139 or section 140 to be an offence or practice entailing disqualification for membership of Parliament and of the Legislature of every State, unless such period has elapsed as has been provided in that behalf in the said section 139 or section 140, as the case may be ;

(*b*) if, whether before or after the commencement of the Constitution, he has been convicted by a court in India of any offence and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Election Commission may allow in any particular case, has elapsed since his release ;

(*c*) if, having been nominated as a candidate for Parliament or the Legislature of any State or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by or under this Act, unless five years have elapsed from the date by which the return ought to have been lodged or the Election Commission has removed the disqualification ;

(*d*) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government ;

(*e*) if, he is a director or managing agent of, or holds any office of profit under, any corporation in which the appropriate Government has any share or financial interest ;

(*f*) if, having held any office under the Government of India or the Government of any State or under the Crown in India or under the Government of an Indian State, he has, whether before or after the commencement of the Constitution, been dismissed for corruption or disloyalty to the State, unless a period of five years has elapsed since his dismissal.

8. Savings.—(1) Notwithstanding anything in section 7—

(*a*) a disqualification under clause (*a*) or clause (*b*) of that section shall not, in the case of a person who becomes so disqualified by virtue of a conviction or a conviction and a sentence and is at the date of the disqualification a member of Parliament or of the Legislature of a State, take effect until three months have elapsed from the date of such disqualification, or if within these three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of ;

(*b*) a disqualification under clause (*c*) of that section shall not take effect until the expiration of two months from the date by which the return of election expenses ought to have been lodged or of such longer period as the Election Commission may in any particular case allow ;

(*c*) a disqualification under clause (*d*) of that section shall not, where the share or interest in the contract devolves on a person by inheritance or succession or as a legatee, executor or administrator, take effect until the expiration of six months after it has so devolved on him or of such longer period as the Election Commission may in any particular case allow ;

(*d*) a person shall not be disqualified under clause (*d*) of that section by reason of his having a share or interest in a contract entered into between a public company of which he is a shareholder but is neither a director holding an office of profit under the company nor a managing agent and the appropriate Government;

(*e*) a person shall not be disqualified under clause (*e*) of that section by reason of his being a director unless the office of such director is declared by Parliament by law to so disqualify its holder;

(*f*) a disqualification under clause (*e*) of that section shall not, in the case of a director, take effect where the law making any such declaration as is referred to in clause (*e*) of this section in respect of the office of such director has come into force after the director has been chosen a member of Parliament or of the Legislature of a State, as the case may be, until the expiration of six months after the date on which such law comes into force or of such longer period as the Election Commission may in any particular case allow;

(*g*) a disqualification under clause (*f*) of that section may, in the case of any of the candidates for the first elections under this Act, be removed by the Election Commission for reasons to be recorded by it in writing.

(2) Nothing in clause (*d*) of section 7 shall extend to a contract entered into between a co-operative society and the appropriate Government.

9. Interpretation, etc.—(1) In this chapter—

(*a*) "appropriate Government" means in relation to any disqualification for being chosen as or for being a member of either House of Parliament, the Central Government, and in relation to any disqualification for being chosen as or for being a member of the Legislative Assembly or Legislative Council of a State, the State Government;

(*b*) "public company" means a public company as defined in section 2 of the Indian Companies Act, 1913 (VII of 1913).

(2) For the avoidance of doubt it is hereby declared that where any such contract as is referred to in clause (*d*) of section 7 has been entered into by or on behalf of a Hindu undivided family and the appropriate Government, every member of that family shall become subject to the disqualification mentioned in the said clause; but where the contract has been entered into by a member of a Hindu undivided family carrying on a separate business in course of such business, any other member of the said family having no share or interest in that business shall not become subject to such disqualification.

(3) If any question is raised as to whether a person who, having held any office referred to in clause (*f*) of section 7, has been dismissed is disqualified under that clause for being chosen as a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State, the production of a certificate issued in the prescribed manner by the Election Commission to the effect that such person has not been dismissed for corruption or disloyalty to the State shall be conclusive proof that he is not disqualified under that clause.

CHAPTER IV

Qualification and disqualification for membership of electoral colleges.

10. Qualification for membership of electoral colleges for certain Part C States.—A person shall not be qualified to be chosen as a member of an electoral college for any scheduled Part C State, unless he is an elector for any Council of States constituency in that State.

11. Disqualification for membership of electoral colleges for certain Part C States.—A person shall be disqualified for being chosen as a member of an electoral college for any scheduled Part C State if he is for the time being disqualified for being chosen as a member of either House of Parliament under any of the provisions of article 102.

PART III

NOTIFICATION OF GENERAL ELECTIONS

CHAPTER I

Parliament

The Council of States

12. Notification for election to the Council of States.—(1) For the purpose of constituting the Council of States under the Constitution in due time, the President shall,—

(*a*) after the names of the elected members of the Legislative Assemblies of Part A States and Part B States other than the State of Jammu and Kashmir first constituted under the Constitution have been notified under section 67, call upon the elected members of each such Assembly, by a notification in the *Gazette of India*, to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder before such date as may be appointed in this behalf by the Election Commission and specified in such notification, and

(*b*) after the names of the members of the electoral colleges for the scheduled Part C States first constituted under Part IV-A of the Representation of the People Act, 1950 (XLIII of 1950), have been notified under section 67, by another notification call upon the members of the electoral college for each Part C State or group of such States concerned to elect a member or members in accordance with the provisions of this Act and of the rules and orders made thereunder before such date as may be appointed in this behalf by the Election Commission and specified in such notification.

(2) For the purpose of filling the seats of members retiring on the expiration of their respective terms of office in every second year after the constitution of the Council of States, the President shall,—

(*a*) by a notification in the *Gazette of India*, call upon the elected members of the Legislative Assembly of each of the States referred to in sub-section (1) concerned to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder before such date as may be appointed in this behalf by the Election Commission and specified, in such notification, and

(*b*) by another notification call upon the members of the electoral college for each of the Part C States and group of such States concerned and also the elected members of the Coorg Legislative Council, if necessary, to elect a member or members in accordance with the provisions of this Act and of the rules and orders made thereunder before such date as may be appointed in this behalf by the Election Commission and specified in such notification:

Provided that the notifications under this sub-section shall be issued on such dates, not being more than four months prior to the date on which the term of office of the retiring members would expire under section 154, as may be recommended in this behalf by the Election Commission.

13. Notification for constitution of electoral colleges for certain Part C States.—For the purpose of the first constitution and of each subsequent reconstitution of the electoral college for each scheduled Part C State under

Part IV-A of the Representation of the People Act, 1950 (XLIII of 1950), the President shall by one or more notifications in the *Gazette of India* call upon all Council of States constituencies concerned to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder before such date or dates as may be appointed in this behalf by the Election Commission and specified in the notification or notifications :

Provided that every such notification calling upon the Council of States constituencies in any Part C State or group of such States shall be issued, as far as may be, at the same time when a notification calling upon the Parliamentary constituencies in such State or group of States to elect a member or members for the purpose of constituting the House of the People in due time or on the expiration of the duration of that House or on its dissolution, as the case may be, is issued.

The House of the People.

14. General elections to the House of the People.—(1) A general election shall be held for the purpose of constituting the House of the People under the Constitution in due time.

(2) A general election shall also be held on the expiration of the duration of the House of the People or on its dissolution in order that a new House of the People may be constituted.

15. Notification for election to the House of the People.—For the purpose of constituting the House of the People under the Constitution in due time or on the expiration of the duration of the House of the People or on its dissolution, the President shall, by one or more notifications published in the *Gazette of India* on such date or dates as may be recommended by the Election Commission call upon all the Parliamentary constituencies to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder before such date or dates as may be appointed in this behalf by the Election Commission and specified in the notification or notifications :

Provided that for the purpose of constituting the House of the People on the expiration of its duration, no such notification shall be issued at any time earlier than four months prior to the date on which the duration of the House of the People would expire in the ordinary course of events.

CHAPTER II.

State Legislatures.

The State Legislative Assemblies.

16. General elections to Legislative Assemblies.—(1) A general election shall be held for the purpose of constituting the Legislative Assembly of each State under the Constitution in due time.

(2) A general election shall also be held on the expiration of the duration of an Assembly or on its dissolution in order that a new Assembly may be constituted.

17. Notification for election to State Legislative Assemblies.—For the purpose of constituting the Legislative Assembly of a State under the Constitution in due time or on the expiration of the duration of an Assembly or on its dissolution, the Governor or Rajpramukh, as the case may be, of the State shall, by one or more notifications published in the Official Gazette on such date or dates as may be recommended by the Election Commission, call upon all the Assembly constituencies to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder before such date or dates as may be appointed in this behalf by the Election Commission and specified in the notification or notifications :

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Provided that for the purpose of constituting the Legislative Assembly of a State on the expiration of its duration, no such notification shall be issued at any time earlier than four months prior to the date on which the duration of the Legislative Assembly of the State would expire in the ordinary course of events.

The State Legislative Councils.

18. Notification for election to State Legislative Councils.—(1) For the purpose of constituting the Legislative Council of a State under the Constitution in due time, the Governor or Rajpramukh of the State, as the case may be, shall—

(*a*) by a notification in the Official Gazette call upon every local authorities' constituency, every graduates' constituency and every teachers' constituency to elect in accordance with the provisions of this Act and of the rules and orders made thereunder a member or members before such date as may be appointed in this behalf by the Election Commission and specified in such notification, and

(*b*) after the names of the members of the Legislative Assembly of the State first constituted under the Constitution have been notified under section 67, call upon such members, by another notification in the Official Gazette, to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder before such date as may be appointed in this behalf by the Election Commission and specified in such notification.

(2) For the purpose of filling the seats of members retiring on the expiration of their respective terms of office in every second year after the constitution of the Legislative Council of a State, the Governor or Rajpramukh, as the case may be, shall—

(*a*) by a notification in the Official Gazette call upon every local authorities' constituency, every graduates' constituency and every teachers' constituency concerned to elect in accordance with the provisions of this Act and of the rules and orders made thereunder a member or members before such date as may be appointed in this behalf by the Election Commission and specified in such notification, and

(*b*) by another notification in the Official Gazette call upon the members of the Legislative Assembly of the State to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder before such date as may be appointed in this behalf by the Election Commission and specified in such notification :

Provided that the notifications under this sub-section shall be issued on such dates, not being more than four months prior to the date on which the term of office of the retiring members would expire under section 156, as may be recommended in this behalf by the Election Commission.

PART IV.

ADMINISTRATIVE MACHINERY FOR THE CONDUCT OF ELECTIONS.

19. Definition.—In this Part and in Part V, unless the context otherwise requires, "constituency" means a Council of States constituency or a Parliamentary constituency or an Assembly constituency or a Council constituency.

20. Returning Officer for each constituency.—For each constituency there shall be a Returning Officer who shall be such officer of Government as the Election Commission may, in consultation with the Government of the State in which the constituency is situated, designate or nominate :

Provided that nothing in this section shall prevent the Election Commission from designating or nominating the same person to be the Returning Officer for more than one constituency.

21. Returning Officers at other elections.—The Returning officer for an election (other than a primary election) to fill a seat or seats in the Council of States or for an election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State shall be such officer of Government as the Election Commission may, in consultation with the Government of that State, designate or nominate.

22. Assistant Returning Officers.—(1) The Election Commission may appoint one or more persons to assist any Returning Officer in the performance of his functions :

Provided that every such person shall be an officer of Government.

(2) Every Assistant Returning Officer shall, subject to the control of the Returning Officer, be competent to perform all or any of the functions of the Returning Officer :

Provided that no Assistant Returning Officer shall perform any of the functions of the Returning Officer which relate to the acceptance of a nomination paper or to the scrutiny of nominations or to the counting of votes unless the Returning Officer is unavoidably prevented from performing the said function.

23. Returning Officer to include Assistant Returning Officers performing the functions of the Returning Officer.—References in this Act to the Returning Officer shall, unless the context otherwise requires, be deemed to include an Assistant Returning Officer performing any function which he is authorised to perform under sub-section (2) of section 22.

24. General duty of the Returning Officer.—It shall be the general duty of the Returning Officer at any election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by this Act and rules or orders made thereunder.

25. Provision of polling stations for constituencies.—The Returning Officer for each constituency shall, with the previous approval of the Election Commission, provide a sufficient number of polling stations for such constituency, and shall publish, in such manner as the Election Commission may direct, a list showing the polling stations so provided and the polling areas for which they have respectively been provided.

26. Appointment of presiding officers for polling stations.—(1) The Returning Officer shall appoint a presiding officer for each polling station and such polling officer or officers as he thinks necessary, but he shall not appoint any person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election :

Provided that if a polling officer is absent from the polling station, the presiding officer may appoint any person who is present at the polling station other than a person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election, to be the polling officer during the absence of the former officer, and inform the Returning Officer accordingly.

(2) A polling officer shall, if so directed by the presiding officer, perform all or any of the functions of a presiding officer under this Act or any rules or orders made thereunder.

(3) If the presiding officer, owing to illness or other unavoidable cause, is obliged to absent himself from the polling station, his functions shall be performed by such polling officer as has been previously authorised by the Returning Officer to perform such functions during any such absence.

(4) References in this Act to the presiding officer shall, unless the context otherwise requires, be deemed to include any person performing any function which he is authorised to perform under sub-section (2) or sub-section (3), as the case may be.

27. General duty of the presiding officer.—It shall be the general duty of the presiding officer at a polling station to keep order thereat and to see that the poll is fairly taken.

28. Duties of a polling officer.—It shall be the duty of the polling officers at a polling station to assist the presiding officer for such station in the performance of his functions.

29. Special provisions in the case of certain elections.—(1) The Returning Officer for an election (other than a primary election) to fill a seat or seats in the Council of States or for an election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State shall, with the previous approval of the Election Commission, fix the place at which the poll will be taken for such election and shall notify the place so fixed in such manner as the Election Commission may direct.

(2) The Returning Officer shall preside over such election at the place so fixed and shall appoint such polling officer or officers to assist him as he thinks necessary but he shall not appoint any person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election.

PART V

CONDUCT OF ELECTIONS

CHAPTER I

Nomination of candidates

30. Appointment of dates for nominations, etc.—As soon as the notification calling upon a constituency to elect a member or members is issued under this Act, the appropriate authority in the case where such notification has been issued under the provisions of Part III or of this part, and the Election Commission in the case where such notification has been issued under the provisions of Part IX, shall, by notification in the Official Gazette, appoint—

(*a*) the last date for making nominations, which shall be a date not later than the fourteenth day after the date of publication of the first mentioned notification nor earlier than the eighth day after the date of publication of the notification under this section ;

(*b*) the date for the scrutiny of nominations, which shall be a date not later than the seventh day after the last date for making nominations ;

(*c*) the last date for the withdrawal of candidatures, which shall be the third day after the date for the scrutiny of nominations ; and

(*d*) the date or dates on which a poll shall, if necessary, be taken which or or the first of which shall be a date not earlier than the thirtieth day after the last date for the withdrawal of candidatures.

31. Public notice of election.—On the issue of a notification under section 30, the Returning Officer for the constituency shall give public notice of the intended election in such form and manner as may be prescribed, inviting nominations of candidates for such election and specifying the place at which the nomination papers are to be delivered.

32. Nomination of candidates for election.—Any person may be nominated as a candidate for election to fill a seat in any constituency if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act.

33. Presentation of nomination paper and requirements for a valid nomination.—(1) On or before the date appointed under clause (*a*) of section 30 each candidate shall, either in person or by his proposer or seconder, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconder.

(2) Any person whose name is registered in the electoral roll of the constituency and who is not subject to any disqualification mentioned in section 16 of the Representation of the People Act, 1950 (XLIII of 1950), may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled but no more :

Provided that if the name of a person is entered more than once in the electoral roll of a constituency or is included in the electoral roll of two or more constituencies of the same class, such person shall not be entitled to subscribe as proposer or seconder more than one nomination paper for each vacancy to be filled in that contituency, or in not more than one of such constituencies of the same class.

(3) Every nomination paper delivered under sub-section (1) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another person who is not disqualified under this Act for the appointment and who shall be named in the declaration, and by such other declarations, if any as may be prescribed ; and no candidate shall be deemed to be duly nominated unless such declaration is, or all such declarations are, delivered along with the nomination paper :

Provided that in a constituency where any seat is reserved for the Scheduled Castes or for the Scheduled Tribes, no candidate shall be deemed to be qualified to be chosen to fill that seat unless his nomination paper is accompanied by a declaration verified in the prescribed manner that the candidate is a member of the Scheduled Castes or of the Scheduled Tribes for which the seat has been so reserved and the declaration specifies the particular caste or tribe of which the candidate is a member and also the area in relation to which such caste or tribe is one of the Scheduled Castes or Scheduled Tribes, as the case may be :

Provided further that in a constituency where any seat is reserved for an autonomous district of Assam other than the constituency comprising the cantonment and municipality of Shillong, no candidate shall be deemed to be duly nominated for the seat so reserved unless the nomination paper is accompanied by a declaration verified in the prescribed manner that the candidate is a member of any of the Scheduled Tribes of that district and the declaration specifies the particular tribe of which the candidate is a member :

Provided also that where any person having held any office referred to in clause (*f*) of section 7 has been dismissed and the period of five years from the date of such dismissal has not expired or the disqualification, if any, under that clause has not been removed by the Election Commission under clause (*g*) of sub-section (1) of section 8, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

(4) Any nomination paper which is not received before three o'clock in the afternoon on the last date appointed under clause (*a*) of section 30 shall be rejected.

(5) On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls :

Provided that the Returning Officer may—

(*a*) permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls ; and

(*b*) where necessary, direct that any clerical or printing error in the said entries shall be overlooked.

(6) If at the time of the presentation of the nomination paper the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the constituency for which he is the Returning Officer, he shall for the purposes of sub-section (5) require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll.

(7) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper for election in the same constituency.

34. Deposits.—(1) A candidate shall not be deemed to be duly nominated unless he deposits or causes to be deposited in the case of an election to Parliament (other than a primary election) a sum of five hundred rupees, in the case of an election to the Legislature of a State a sum of two hundred and fifty rupees, and in the case of a primary election a sum of fifty rupees :

Provided that—

(*a*) where the candidate is a member of any of the Scheduled Castes or the Scheduled Tribes, the amount to be deposited by him or on his behalf shall be two hundred and fifty rupees in the case of an election to Parliament (other than a primary election), and one hundred and twenty-five rupees in the case of an election to the Legislature of a State ;

(*b*) where a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him under this sub-section.

(2) Any sum required to be deposited under sub-section (1) shall not be deemed to have been deposited under that sub-section unless at the time of delivery of the nomination paper under sub-section (1) of section 33 the candidate has either deposited or caused to be deposited that sum with the Returning Officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury.

35. Notice of nominations and the time and place for their scrutiny.—The Returning Officer shall, on receiving the nomination paper under sub-section (1) of section 33, inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the persons who have subscribed the nomination paper as proposer and seconder.

36. Scrutiny of nominations.—(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer and one seconder of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the Returning Officer may appoint; and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds:—

(*a*) that the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act; or

(*b*) that the candidate is disqualified for being chosen to fill the seat under the Constitution or this Act; or

(*c*) that a proposer or seconder is disqualified from subscribing a nomination paper under sub-section (2) of section 33; or

(*d*) that there has been any failure to comply with any of the provisions of section 33 or section 34; or

(*e*) that the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud.

(3) Nothing contained in clause (*c*), clause (*d*) or clause (*e*) of sub-section (2) shall be deemed to authorise the refusal of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character.

(5) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under clause (*b*) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case an objection is made the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) For the purposes of this section— 282

(a) the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper, as the case may be, unless it is proved that the candidate is disqualified under the Constitution or this Act, or that the proposer or seconder, as the case may be, is disqualified under sub-section (2) of section 33;

(b) where a person has subscribed, whether as proposer or seconder, a larger number of nomination papers than there are vacancies to be filled, those of the papers so subscribed which have been first received, up to the number of vacancies to be filled, shall be deemed to be valid.

37. Withdrawal of candidature.—(1) Any candidate may withdraw his candi-lature by a notice in writing which shall contain such particulars as may be prescribed and shall be subscribed by him and delivered before three o'clock in the afternoon on the day fixed under clause (c) of section 30 to the Returning Officer either by such candidate in person or by his proposer, seconder or election agent who has been authorised in this behalf in writing by such candidate:

Provided that if that day is a public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881 (XXVI of 1881) or has been notified by the State Government as a day to be observed as a holiday in Government offices in the State, the notice of withdrawal of candidature shall be considered as having been delivered in due time if it is delivered before three o'clock in the afternoon on the next succeeding day which is neither such a public holiday nor a day so notified.

(2) No person who has given a notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice.

(3) The Returning Officer shall, on receiving a notice of withdrawal under sub-section (1), as soon as may be thereafter, cause a notice of the withdrawal to be affixed in some conspicuous place in his office.

38. Publication of nominations.—The Returning Officer shall, immediately after the expiry of the period within which candidatures may be withdrawn under sub-section (1) of section 37, prepare and publish a list of valid nominations in such manner as may be prescribed.

39. Nomination of candidates at other elections.—(1) Any person may be nominated as a candidate for election to fill a seat in the Council of States to be filled by election by the elected members of the Legislative Assembly of a State or by the members of the electoral college for a Part C State or group of such States or by the elected members of the Coorg Legislative Council, or a seat in the Legislative Council of a State to be filled by election by the members of the Legislative Assembly of that State, if he is qualified to be chosen to fill that seat under the Constitution and this Act.

(2) As soon as the notification calling upon the elected members or the members of the Legislative Assembly of a State or the members of the electoral college for a Part C State or group of such States or the elected members of the Coorg Legislative Council to elect a member or members is issued under this Act, the appropriate authority in the case where such notification has been issued under section 12 or section 18, and the Election Commission in the case where such notification has been issued under section 147 or section

151, shall, by notification in the Official Gazette, appoint for such election—

(a) the last date for making nominations which shall be a date not later than the fourteenth day after the date of publication of the first mentioned notification, nor earlier than the fifth day after the date of publication of the notification under this sub-section ;

(b) the date for the scrutiny of nominations which shall be a date not later than the seventh day after the last date for making nominations ;

(c) the last date for the withdrawal of candidatures which shall be the third day after the date for the scrutiny of nominations ; and

(d) the date on which a poll shall, if necessary, be taken which shall be a date not earlier than the seventh day after the last date for the withdrawal of candidatures.

(3) On the issue of a notification under sub-section (2), the Returning Officer for the election shall give public notice of the intended election in such form and manner as may be prescribed inviting nominations of candidates for such election and specifying the place at which the nomination papers are to be delivered.

(4) The provisions of sub-sections (1), (3), (4), (5) and (7) of section (33) and sections 34 to 38 shall apply in relation to nominations of candidates, deposits to be made on such nominations and withdrawal of candidatures at any such election as they apply in relation to nominations of candidates, deposits to be made on such nominations and withdrawal of candidatures at elections in any constituency other than a Council of States constituency :

Provided that any person who is entitled to vote at any such election as is referred to in sub-section (1) shall be qualified to subscribe as proposer or seconder as many nomination papers at that election as there are vacancies to be filled but no more :

Provided further that at the time of the presentation of the nomination paper, the Returning Officer may require the person presenting the same to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll :

Provided also that any references in the said provisions—

(a) to the electoral roll of the constituency shall, unless the context otherwise requires, be construed, in the case of an election by the elected members or by the members of the Legislative Assembly of a State, as references to the list of elected members or to the list of members, as the case may be, of that Assembly maintained under sub-section (1) of section 152, and in the case of an election by the members of the electoral college for a Part C State or group of such States or by the elected members of the Coorg Legislative Council, as references to the list of members of such electoral college or to the list of elected members of the Coorg Legislative Council, as the case may be, maintained under sub-section (2) of that section ;

(b) to section 30, to section 31 and to sub-section (2) of section 33 shall be construed as references to sub-section (2) of this section, to sub-section (3) of this section and to the first proviso to this sub-section respectively.

CHAPTER II

Candidates and their agents.

40. Appointment of election agents.—(1) Every person nominated as a candidate at an election shall before the delivery of his nomination paper under

sub-section (1) of section 33 or under that sub-section read with sub-section (4) of section 39, as the case may be, appoint in writing either himself or some one other person to be his election agent.

(2) When a candidate appoints some person other than himself to be his election agent he shall obtain in writing the acceptance by such person of the office of such election agent.

41. Disqualification for being an election agent.—No person shall be appointed an election agent who is disqualified from being an election agent under section 145.

42. Revocation of the appointment, or death of an election agent.—(1) Any revocation of the appointment of an election agent, whether he be the candidate himself or not, shall be signed by the candidate, and shall operate from the date on which it is lodged with the Returning officer.

(2) In the event of such a revocation or of the death of an election agent, whether that event occurs before or during the election, or after the election but before a return of the candidate's election expenses has been lodged in accordance with the provisions of section 76, the candidate shall appoint forthwith either himself or some other person to be his election agent in the manner provided in section 40, and shall give notice in writing of the appointment to the Returning Officer.

43. Effect of default in appointment of election agent under section 42.—(1) If the appointment of an election agent is revoked without a new appointment being made, the candidate himself shall be deemed to have been appointed or re-appointed, as the case may be, his election agent.

(2) If the election agent (not being the candidate himself) dies and a new appointment is not made on the day of the death or on the following day, the candidate shall be deemed to have appointed himself his election agent as from the time of the death.

44. Duty of the election agent to keep accounts.—Every election agent shall, for each election for which he is appointed election agent, keep separate and regular books of account, and shall enter therein such particulars of expenditure in connection with the election as may be prescribed.

45. Other functions of the election agents.—Every election agent shall perform such other functions in connection with each election for which he is appointed election agent as are required to be performed by or under this Act by such agent.

46. Appointment of polling agents.—A candidate who has been duly nominated under this Act and who has not withdrawn his candidature in the manner and within the time specified in sub-section (1) of section 37, or in that sub-section read with sub-section (4) of section 39, as the case may be, or his election agent may, at least three days before the commencement of the poll, appoint in the prescribed manner such number of agents and relief agents as may be prescribed to act as polling agents of such candidate at each polling station provided under section 25 or at the place fixed under sub-section (1) of section 29 for the poll, and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to such officer as may be prescribed.

47. Appointment of counting agents.—Any such candidate as is mentioned in section 46 or his election agent may, before the commencement of the counting of votes, appoint in the prescribed manner one agent and no more to be present as his counting agent at the counting of votes, and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the Returnining Officer.

48. Revocation of the appointment, or death, of a polling agent or counting agent.—(1) Any revocation of the appointment of a polling agent shall be

signed by the candidate or his election agent and shall operate from the date on which it is lodged with such officer as may be prescribed, and in the event of such a revocation or of the death of a polling agent before the close of the poll, the candidate or his election agent may appoint in the prescribed manner another polling agent at any time before the poll is closed and shall forthwith give notice of such appointment in the prescribed manner to such officer as may be prescribed.

(2) Any revocation of the appointment of a counting agent shall be signed by the candidate or his election agent and shall operate from the date on which it is lodged with the returning officer, and in the event of such a revocation or of the death of a counting agent before the commencement of the counting of votes, the candidate or his election agent may appoint in the prescribed manner another counting agent at any time before the counting of votes is commenced and shall forthwith give notice of such appointment in the prescribed manner to the Returning Officer.

49. Functions of polling agents and counting agents.—(1) A polling agent may perform such functions in connection with the poll as are authorised by or under this Act to be performed by a polling agent.

(2) A counting agent may perform such functions in connection with the counting of votes as are authorised by or under this Act to be performed by a counting agent.

50. Attendance of a candidate or his election agent at polling stations, and performance by him of the functions of a polling agent or counting agent.—(1) At every election where a poll is taken, each candidate at such election and his election agent shall have a right to be present at any polling station provided under section 25 for the taking of the poll or at the place fixed under sub-section (1) of section 29 for the poll.

(2) A candidate or his election agent may himself do any act or think which any polling agent or the counting agent of such candidate, if appointed, would have been authorised by or under this Act to do, or may assist any polling agent or the counting agent of such candidate in doing any such act or thing.

51. Non-attendance of polling or counting agents.—Where any act or thing is required or authorised by or under this Act to be done in the presence of the polling or counting agents, the non-attendance of any such agent or agents at the time and place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done.

CHAPTER III

General procedure at elections

52. Death of candidate before poll.—If a candidate who has been duly nominated under this Act dies after the date fixed for the scrutiny of nominations and a report of his death is received by the Returning Officer before the commencement of the poll, the Returning Officer shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Election Commission and also to the appropriate authority and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election :

Provided that no further nomination shall be necessary in the case of a candidate whose nomination was valid at the time of the countermanding of the poll :

Provided further that no person who has under sub-section (1) of section 37 given a notice of withdrawal of his candidature before the countermanding of the poll shall be ineligible for being nominated as a candidate for the election after such countermanding.

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53. Procedure in contested and uncontested elections.—(1) If the number of candidates who were duly nominated and who have not withdrawn their candidatures, in the manner and within the time specified in sub-section (1) of section 37, or in that sub-section read with sub-section (4) of section 39, as the case may be, exceeds the number of seats to be filled, the Returning Officer shall forthwith publish in such form and manner as may be prescribed a list containing the names in alphabetical order and addresses of candidates as given in the nomination papers, together with such other particulars as may be prescribed, and a poll shall be taken.

(2) If the number of such candidates is equal to the number of seats to be filled, the Returning Officer shall forthwith declare all such candidates to be duly elected to fill those seats.

(3) If the number of such candidates is less than the number of seats to be filled, the Returning Officer shall forthwith declare all such candidates to be elected and the appropriate authority shall, by notification in the Official Gazette, call upon the constituency or the elected members or the members of the State Legislative Assembly or the members of the electoral college concerned or the elected members of the Coorg Legislative Council, as the case may be, to elect a person or persons to fill the remaining seat or seats before such date as may be appointed in this behalf by the Election Commission and specified in the notification :

Provided that where the constituency or the elected members or the members of the State Legislative Assembly or the members of the electoral college or the elected members of the Coorg Legislative Council having already been called upon under this sub-section, has or have failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the appropriate authority shall not be bound to call again upon the constituency, or such members to elect a person or persons until such date as the Election Commission may specify in the behalf.

54. Special procedure at elections in constituencies where seats are reserved for Scheduled Castes or Scheduled Tribes.—(1) The provisions of this section shall apply in relation to any election in a constituency where the seats to be filled include one or more seats reserved for the Scheduled Castes or for the Scheduled Tribes (hereinafter referred to as "reserved seats").

(2) If the number of candidates qualified to be chosen to fill the reserved seats is equal to the number of such seats, all those candidates shall be forthwith declared to be elected to fill the reserved seats, and the procedure laid down in section 53 shall be followed for filling the remaining seat or seats.

(3) If the number of candidates qualified to be chosen to fill the reserved seats exceeds the number of such seats, but the total number of candidates is equal to the total number of seats to be filled, the Returning Officer shall first select by lot, to be drawn by him in such manner as he may determine, the candidates to be declared elected to the reserved seats out of the candidates qualified to be chosen to fill those seats and then declare the candidates so selected to be duly elected to fill the reserved seats and thereafter declare the remaining candidates to be duly elected to fill the remaining seats.

(4) If the number of candidates qualified to be chosen to fill the reserved seats exceeds the number of such seats, and the total number of candidates also exceeds the total number of seats to be filled, the procedure laid down in sub-section (1) of section 53 shall be followed ; and after the poll has been taken, the Returning Officer shall first declare those who, being qualified to be chosen to fill the reserved seats, have secured the largest number of votes, to be duly elected to fill the reserved seats, and then declare such of the remaining candidates as have secured the largest number of votes to be duly elected to fill the remaining seats.

Illustration.—At an election in a constituency to fill four seats of which two are reserved there are six candidates A, B, C, D, E and F, and they secure votes in descending order, A securing the largest number. B, C and D are qualified to be chosen to fill the reserved seats, while A, E and F are not so qualified. The Returning Officer will first declare B and C duly elected to fill the two reserved seats, and then declare A and D (not A and E) to fill the remaining two seats.

(5) If the number of candidates qualified to be chosen to fill the reserved seats is less than the number of such seats,—

(*a*) all those candidates shall be forthwith declared to be duly elected to fill reserved seats ;

(*b*) the procedure laid down in section 53 shall be followed for filling the seats other than the reserved seats ; and

(*c*) the appropriate authority shall, by notification in the Official Gazette, call upon the constituency to elect a person or persons to fill the remaining reserved seat or seats before such date as may be appointed in this behalf by the Election Commission and specified in the notification :

Provided that where a constituency having been already so called upon has failed to elect a person or the requisite number of persons to fill the reserved seat or seats, the appropriate authority shall not be bound to call again upon the constituency to elect a person or persons to fill the vacancy or vacancies until such date as the Election Commission may specify in this behalf.

(6) In this section, references to candidates shall be construed as references to candidates who were duly nominated and who have not withdrawn their candidatures in the manner and within the time specified in sub-section (1) of section 37.

55. Eligibility of members of Scheduled Castes or Scheduled Tribes to hold seats not reserved for those castes or tribes.—For the avoidance of doubt it is hereby declared that a member of the Scheduled Castes or of the Scheduled Tribes shall not be disqualified to hold a seat not reserved for members of those castes or tribes, if he is otherwise qualified to hold such seat under the Constitution and this Act.

CHAPTER IV

The Poll

56. Fixing time for poll.—The appropriate authority shall fix the hours during which the poll will be taken ; and the hours so fixed shall be published in such manner as may be prescribed :

Provided that the total period allotted on any one day for polling at an election in a constituency shall not be less than eight hours.

57. Adjournment of poll in emergencies.—(1) If at an election the proceedings at any polling station provided under section 25 or at the place fixed under sub-section (1) of section 29 for the poll are interrupted or obstructed by any riot or open violence, or if at an election it is not possible to take the poll at any polling station or such place on account of any natural calamity, or any other sufficient cause, the presiding officer for such polling station or the Returning Officer presiding over such place, as the case may be, shall announce an adjournment of the poll to a date to be notified later, and where the poll is so adjourned by a presiding officer, he shall forthwith inform the Returning Officer concerned.

(2) Whenever a poll is adjourned under sub-section (1), the Returning Officer shall immediately report the circumstances to the appropriate authority and the Election Commission, and shall, as soon as may be, with the previous approval

of the Election Commission, appoint the day on which the poll shall recommence, and fix the polling station or place at which, and the hours during which, the poll will be taken, and shall not count the votes cast at such election until such adjourned poll shall have been completed.

(3) In every such case as aforesaid, the Returning Officer shall notify in such manner as the Election Commission may direct the date, place and hours of polling fixed under sub-section (2).

58. Fresh poll in the case of destruction, etc., of ballot boxes.—(1) If at any election any ballot box or boxes is or are unlawfully taken out of the custody of the Returning Officer or of any presiding officer, or is or are in any way tampered with, or is or are either accidently or intentionally destroyed or lost, the election to which such ballot box or boxes relate shall be void, but only in respect of the polling at the polling station or stations provided under section 25 or the place fixed under sub-section (1) of section 29 for the poll, as the case may be, at which such ballot box or boxes was or were used and no further.

(2) Whenever the polling at any polling station or stations or at the place fixed for the poll shall become void under sub-section (1), the Returning Officer shall, as soon as practicable after the act or event causing such voidance has come to his knowledge, report the matter to the appropriate authority and to the Election Commission and shall, with the previous approval of the Election Commission appoint a day for the taking of a fresh poll in such or every such polling station or in such place fixed for the poll and fix the hours during which the poll will be taken, and shall not count the votes cast at such election until such fresh poll shall have been completed.

(3) In every such case as aforesaid the Returning Officer shall take a fresh poll in such or every such polling station or in such place fixed for the poll as aforesaid on the day so appointed by him, and shall notify the day so appointed and the hours of polling so fixed by him in such manner as the Election Commission may direct, and the provisions of this Act and of any rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll.

59. Manner of voting at elections.—At every election where a poll is taken votes shall be given by ballot in such manner as may be prescribed, and no votes shall be received by proxy.

60. Special procedure for voting by certain classes of persons.—Without prejudice to the generality of the provisions contained in section 59, provision may be made by rules made under this Act for enabling—

(*a*) any of the following persons to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, namely :—

(i) a member of the Armed Forces of the Union to whom the provisions of sub-section (3) of section 20 of the Representation of the People Act, 1950 (XLIII of 1950), apply ;

(ii) a person holding any office in India declared by the President to be an office to which the provisions of sub-section (4) of that section apply ;

(iii) a person who is employed under the Government of India in a post outside India ;

(iv) the wife of any such person as is referred to in sub-clauses (i), (ii) and (iii) to whom the provisions of sub-section (6) of the said section 20 apply ;

(b) any person subjected to preventive detention under any law for the time being in force to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, subject to the fulfilment of such requirements as may be specified in those rules.

61. Special procedure for preventing personation of electors.—Provision may also be made by rules made under this Act for the marking with indelible ink of the thumb or any other finger of every elector who applies for a ballot paper or ballot papers for the purpose of voting at a polling station before delivery of such paper or papers to him and for prohibiting the delivery of any ballot paper to any person for voting at a polling station if at the time such person applies for such paper he has already such a mark on his thumb or any other finger so as to prevent personation of electors.

62. Right to vote.—(1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950 (XLIII of 1950).

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote, all his votes in that constituency shall be void.

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police :

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

63. Method of voting.—(1) In plural member constituencies other than Council constituencies every elector shall have as many votes as these are members to be elected, but no elector shall give more than one vote to any one candidate.

(2) If an elector gives more than one vote to any one candidate in contravention of the provisions of sub-section (1), then at the time of counting of votes not more than one of the votes given by him to such candidate shall be taken into account and all the other votes given by him to such candidate shall be rejected as void.

CHAPTER V

Counting of votes

64. Counting of votes.—At every election where a poll is taken, votes shall be counted by, or under the supervision of, the Returning Officer, and each candidate, his election agent and his counting agent, shall have a right to be present at the time of counting.

65. Equality of votes.—If, after the counting of the votes is completed, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of those candidates to be declared elected, the Returning Officer shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

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66. Declaration of results.—When the counting of the votes has been completed, the Returning Officer shall forthwith declare the result of the election in the manner provided by this Act or the rules made thereunder.

67. Report of the result.—As soon as may be after the result of an election has been declared, the Returning Officer shall report the result to the appropriate authority and the Election Commission and in the case of an election to a House of Parliament or of the Legislature of a State also to the Secretary of that House, and the appropriate authority shall cause to be published in the Official Gazette the declarations containing the names of the elected candidates.

CHAPTER VI

Multiple elections

68. Vacation of seats when elected to both Houses of Parliament.—(1) Any person who is chosen a member of both the House of the People and the Council of States and who has not taken his seat in either House may, by notice in writing signed by him and delivered to the Secretary to the Election Commission within ten days from the date of publication in the *Gazette of India* of the declarations that he has been so chosen or, if such publications have been made on different dates, within ten days from the later of such dates, intimate in which of the Houses he wishes to serve, and thereupon, his seat in the House in which he does not wish to serve shall become vacant.

(2) In default of such intimation within the aforesaid period, his seat in the Council of States shall, at the expiration of that period, become vacant.

(3) Any intimation given under sub-section (1) shall be final and irrevocable.

69. Vacation of seats by persons already members of one House on election to other House of Parliament.—(1) If a person who is already a member of the House of the People and has taken his seat in such House is chosen a member of the Council of States, his seat in the House of the People shall, on the publication in the *Gazette of India* of the declaration that he has been so chosen, become vacant.

(2) If a person who is already a member of the Council of States and has taken his seat in such Council is chosen a member of the House of the People, his seat in the Council of States shall, on the publication in the *Gazette of India* of the declaration that he has been so chosen, become vacant.

70. Election to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State.—If a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State, then, unless within the prescribed time he resigns all but one of the seats, all the seats shall become vacant.

CHAPTER VII

Publication of election results and nominations

71. Publication of results of elections to the Council of States and of names of persons nominated by the President.—(1) After the elections held in pursuance of the notifications issued under sub-section (1) of Section 12, there shall be notified by the appropriate authority in the Official Gazette the names of the members elected by the elected members of the Legislative Assemblies of the States and by the members of the electoral colleges for the various Part C States and group of such States at the said elections together with the names of the persons nominated by the President to the Council under sub-clause (*a*) of clause (1) of article 80 or under any other provisions.

(2) After the elections held in any year in pursuance of the notifications issued under sub-section (2) of section 12, there shall be notified by the appropriate authority in the Official Gazette the names of the members elected by the elected members of the Legislative Assemblies of the States and by the members of the electoral colleges for the various Part C States and group of such States including the elected members of the Coorg Legislative Council at the said elections together with the names of any persons nominated by the President to the Council under sub-clause (*a*) of clause (1) of article 80 or under any other provisions.

(3) The notification of names under sub-section (1) or sub-section (2) shall be in addition to the publication of the declarations under section 67 and shall be made as soon as may be after the last of the dates fixed for the completion of the elections under sub-section (1) or, as the case may be, sub-section (2) of section 12, and after the publication of the notification or notifications containing the names of persons nominated by the President to the Council under sub-clause (*a*) of clause (1) of article 80 or under any other provisions.

72. Publication of results of primary elections for the constitution or reconstitution of electoral colleges for certain Part C States.—After the elections held in pursuance of the notification or notifications issued under section 13 for the first constitution or any subsequent reconstitution of the electoral college for a scheduled Part C State, there shall be notified by the appropriate authority in the Official Gazette, as soon as may be after the date or the last of the dates fixed for the completion of the said elections, the names of the members elected for the various Council of States constituencies at the said elections and such notification shall be in addition to the publication of the declarations under section 67.

73. Publication of results of general elections to the House of the People and of names of persons nominated by the President.—After the election held in pursuance of the notification or notifications issued under section 15 for the constitution of the House of the People in due time or on the expiration of its duration or on its dissolution, there shall be notified by the appropriate authority in the Official Gazette, as soon as may be after the date or the last of the dates fixed for the completion of the said elections, the names of the members elected for the various Parliamentary constituencies at the said elections together with the names of persons, if any, nominated by the President to that House under article 331 or under any other provisions, and such notification shall be in addition to the publication of the declarations under section 67.

74. Publication of results of general elections to the State Legislative Assemblies and of names of persons nominated to such Assemblies.—After the elections held in pursuance of the notification or notifications issued under section 17 for the constitution of the Legislative Assembly of a State in due time or on the expiration of its duration or on its dissolution, there shall be notified by the appropriate authority in the Official Gazette, as soon as may be after the date or the last of the dates fixed for the completion of the said elections, the names of the members elected for the various Assembly constituencies at the said elections together with the names of persons, if any, nominated by the Governor or Rajpramukh, as the case may be, of the State under article 333 or under any other provisions and such notification shall be in addition to the publication of the declarations under section 67.

75. Publication of results of elections to the State Legislative Councils and of names of persons nominated to such Councils.—(1) After the elections held in pursuance of the notifications issued under sub-section (1) of section 18, there shall be notified by the appropriate authority in the Official Gazette the names of the members elected for the various Council constituencies and by the members of the Legislative Assembly of the State at the said elections together with the names of the persons nominated by the Governor or Rajpramukh, as the case may be, of the State under sub-clause (*e*) of clause (3) of article 171.

(2) After the elections held in any year in pursuance of the notifications issued under sub-section (2) of section 18, there shall be notified by the appropriate authority in the Official Gazette the names of the members elected for the various Council constituencies and by the members of the Legislative Assembly of the State at the said elections together with the names of any persons nominated by the Governor or Rajpramukh, as the case may be, under sub-clause (*e*) clause (3) of article 171.

(3) The notification of names under sub-section (1) or sub-section (2) shall be in addition to the publication of the declarations under section 67 and shall be made as soon as may be after the last of the dates fixed for the completion of the elections under sub-section (1) or, as the case may be, sub-section (2) of section 18, and after the publication of the notification containing the names of persons nominated by the Governor or Rajpramukh, as the case may be, under sub-clause (*e*) of clause (3) of article 171.

CHAPTER VIII

Election expenses

76. Return of election expenses.—(1) Within the prescribed time after every election there shall be lodged with the Returning Officer in respect of each person who has been nominated as a candidate, a return of the election expenses of that person signed by him and his election agent.

(2) Every such return shall be in such form and shall contain such particulars as may be prescribed, and shall be accompanied by declarations in the prescribed form by the candidate and his election agent made on oath or solemn affirmation before a magistrate.

(3) Notwithstanding anything in this section, where owing to absence from India a candidate is unable to sign the return of election expenses and to make the required declaration, the return shall be signed and lodged by the election agent only and shall be accompanied by a declaration by the election agent only, and the candidate shall, within fourteen days after his return to India, cause to be lodged with the Returning Officer a declaration made on oath or solemn affirmation before a magistrate in such form as may be prescribed.

77. Maximum election expenses, etc.—The maximum scales of election expenses at elections and the numbers and descriptions of persons who may be employed for payment in connection with elections shall be such as may be prescribed.

78. Application of this Chapter to certain elections.—Except so far as may be prescribed, this Chapter shall not apply to an election (other than a primary election) to fill a seat or seats in the Council of States or to an election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of that State.

PART VI

DISPUTES REGARDING ELECTIONS

CHAPTER I

Interpretation

79. Definitions.—In this Part and in Parts VII and VIII, unless the context otherwise requires,—

(*a*) "agent" includes an election agent, a polling agent and a counting agent and any person who, on the trial of an election petition or

of an offence with respect to any election, is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate ;

(*b*) " candidate " means a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when with the election in prospect, he began to hold himself out as a prospective candidate ;

(*c*) " costs " means all costs, charges and expenses of, or incidental to, a trial of an election petition ;

(*d*) " electoral right " means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election ;

(*e*) " pleader " means any person entitled to appear and plead for another in a civil court and includes an advocate, a vakil and an attorney of a High Court ;

(*f*) " returned candidate " means a candidate whose name has been published under section 67 as duly elected.

CHAPTER II

Presentation of election petitions to Election Commission

80. Election petitions.—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-sections (1) and (2) of section 100 and section 101 to the Election Commission by any candidate at such election or any elector in such form and within such time but not earlier than the date of publication of the name or names of the returned candidate or candidates at such election under section 67, as may be prescribed.

Explanation.—In this sub-section, " elector " means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) An election petition shall be deemed to have been presented to the Election Commission—

(*a*) when it is delivered to the Secretary to the Commission or to such other officer as may be appointed by the Election Commission in this behalf—

(i) by the person making the petition, or

(ii) by a person authorised in writing in this behalf by the person making the petition ; or

(*b*) when it is sent by registered post and is delivered to the Secretary to the Commission or the officer so appointed.

82. Parties to the petition.—A petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated.

83. Contents of petition.—(1) An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice.

(3) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

84. Relief that may be claimed by the petitioner.—A petitioner may claim any one of the following declarations :—

(*a*) that the election of the returned candidate is void ;

(*b*) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected ;

(*c*) that the election is wholly void.

85. Petition when to be dismissed.—If the provisions of section 81, section 83 or section 117 are not complied with, the Election Commission shall dismiss the petition :

Provided that if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed therefor, the Election Commission may in its discretion condone such failure.

CHAPTER III

Trial of election petitions

86. Appointment of Election Tribunal.—(1) If the petition is not dismissed under section 85, the Election Commission shall appoint an Election Tribunal for the trial of the petition.

(2) For the purpose of constituting such Tribunals the Election Commission shall obtain from the High Court of each State (other than Jammu and Kashmir)—

(*a*) a list of persons who are or have been district judges in the State and who are in the opinion of the High Court fit to be appointed as members of the Election Tribunals, and

(*b*) a list of advocates of that High Court who have been in practice for a period of not less than ten years and who are in the opinion of the High Court fit to be appointed as such members

and shall maintain the lists by making such alterations therein as the High Court may from time to time direct.

(3) Every Tribunal appointed under sub-section (1) shall consist of—

(*a*) a Chairman who shall be either a person who is or has been a judge of a High Court, or a person selected by the Election Commission from the list maintained by it under clause (*a*) of sub-section (2) ; and

(*b*) two other members of whom one shall be selected by the Election Commission from the list maintained under clause (*a*) of sub-section (2) and the other shall be selected by it from the list maintained under clause (*b*) of that sub-section :

Provided that where the petition for the trial of which a Tribunal is to be appointed is in respect of an election to the Legislative Assembly or the Legislative Council of a State, no person who belongs to the judicial service of another State shall be selected for appointment as a member of the Tribunal except with the consent of the Government of the other State :

Provided further that nothing in this sub-section shall be deemed to prevent the appointment of a Chairman of the Tribunal before that of the other members.

(4) If during the course of the trial, any member of a Tribunal is for any reason unable to perform his functions or has to relinquish his membership, the Election Commission shall appoint another member in accordance with the provisions of sub-section (3), and upon his joining the Tribunal the trial shall be continued as if he had been on the Tribunal from the commencement of the trial:

Provided that the Tribunal may, if it thinks fit, recall and re-examine any of the witnesses already examined.

(5) References to the tribunal in this Part shall, as respects any matter to be done before the commencement of the trial, be deemed to be references to the Chairman of the Tribunal.

(6) In this section, the expressions "district judge" and "judicial service" have the same meanings as in article 236.

87. Connected petitions to be referred to same Tribunal.—Where more petitions than one are presented in respect of the same election, the Election Commission shall refer all of them to the same Tribunal, which may, in its discretion, try them separately or in one or more groups.

88. Place of trial.—The trial shall be held at such place as the Election Commission may appoint:

Provided that a Tribunal may, in its discretion, sit for any part of the trial at any other place in the State in which the election to which the petition relates has taken place.

89. Attendance of law officers.—(1) The Tribunal may, in the case of an election petition in relation to a primary election or to an election to fill a seat in either House of Parliament, require the Attorney-General of India or the Advocate-General of the State in which the election has taken place or some person acting under the instructions of the Attorney-General or such Advocate-General, and in the case of an election petition in relation to an election to fill a seat in the House or either House of the Legislature of State, require the Advocate-General of the State in which the election has taken place or some person acting under his instructions, to attend at the trial.

(2) The Attorney-General or the Advocate-General or the person acting under the instructions of the Attorney-General or the Advocate-General, as the case may be, shall, when so required, attend at the trial and shall take such part therein as the Tribunal may direct.

90. Procedure before the Tribunal.—(1) The Tribunal shall, as soon as may be, cause a copy of the petition together with a copy of the list of particulars referred to in sub-section (2) of section 83 to be served on each respondent and to be published in the Official Gazette. and at any time within fourteen days after such publication, any other candidate shall, subject to the provisions of section 119, be entitled to be joined as a respondent.

(2) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Act V of 1908), to the trial of suits:

Provided that it shall be sufficient for the Tribunal to make a memorandum of the substance of the evidence of any witness examined by the Tribunal and it shall not be necessary for the Tribunal to take down the evidence of any witness in

writing at length unless the Tribunal is, on the application of any party or otherwise, satisfied that there is any special reason for so doing :

Provided further that the Tribunal shall have the discretion to refuse for reasons to be recorded in writing to examine and witness or witnesses if it is of the opinion that their evidence is nor material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(3) The provision of the Indian Evidence Act, 1872 (I of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

(4) Notwithstanding anything contained in section 85, the Tribunal may dismiss an election petition which does not comply with the provisions of section 81, section 83 or section 117.

91. Appearance before Tribunal.—Any appearance, application or act before the Tribunal may be made or done by the party in person or by a pleader duly appointed to act on his behalf :

Provided that it shall be open to the Tribunal to direct any party to appear in person whenever the Tribunal considers it necessary.

92. Powers of the Tribunal.—The Tribunal shall have the powers which are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters :—

(*a*) discovery and inspection ;

(*b*) enforcing the attendance of witnesses, and requiring the deposit of their expenses ;

(*c*) compelling the production of documents ;

(*d*) examining witnesses on oath ;

(*e*) granting adjournments ;

(*f*) reception of evidence taken on affidavit ; and

(*g*) issuing commission for the examination of witnesses,

and may summon and examine *suo motu* any person whose evidence appears to it to be material ; and shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

Explanation.—For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Tribunal shall be the limits of the State in which the election was held.

93. Documentary Evidence.—Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence at the trial of an election petition on the ground that it is not duly stamped or registered.

94. Secrecy of voting not to be infringed.—No witness or other person shall be required to state for whom he has voted at an election.

95. Answering of criminating questions and certificate of indemnity.—(1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in the trial of an election petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture :

Provided that—

(*a*) a witness who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the Tribunal ; and

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(b) an answer given by a witness to a question put by or before the Tribunal shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceeding.

(2) When a certificate of indemnity has been granted to any witness, it may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IX-A of the Indian Penal Code (Act XLV of 1860) or Part VII of this Act arising out of the matter to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by this Act or any other law.

96. Expenses of witnesses.—The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Tribunal to such person, and shall, unless the Tribunal otherwise directs, be deemed to be part of the costs.

97. Recrimination when seat claimed.—(1) When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election :

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of the publication of the election petition under section 90, given notice to the Tribunal of his intention to do so and has also given the security and the further security referred to in sections 117 and 118 respectively.

(2) Every notice referred to in sub-section (1) shall be accompanied by the statement and list of particulars required by section 83 in the case of an election petition and shall be signed and verified in like manner.

98. Decision of the Tribunal.—At the conclusion of the trial of an election petition the Tribunal shall make an order—

(a) dismissing the election petition ; or

(b) declaring the election of the returned candidate to be void ; or

(c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected ; or

(d) declaring the election to be wholly void.

99. Other orders to be made by the Tribunal.—(1) At the time of making an order under section 98 the Tribunal shall also make an order—

(a) Where any charge is made in the petition of any corrupt or illegal practice having been committed at the election, recording—

(i) a finding whether any corrupt or illegal practice has or has not been proved to have been committed by, or with the connivance of, any candidate or his agent at the election, and the nature of that corrupt or illegal practice ; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice and the nature of that practice, together with any such recommendations as the Tribunal may think proper to make for the exemption of any persons from any disqualifications which they may have incurred in this connection under sections 141 to 143 ; and

(*b*) fixing the total amount of costs payable, and specifying the persons by and to whom costs shall be paid :

Provided that no person shall be named in the order under sub-clause (*ii*) of clause (*a*) unless—

(*a*) he has been given notice to appear before the Tribunal and to show cause why he should not be so named ; and

(*b*) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the Tribunal and has given evidence against him, of calling evidence in his defence and of being heard.

(2) Any order as to costs under clause (*b*) of sub-section (1) may include a direction for the payment of costs to the law officer attending the trial in pursuance of any requisition of the Tribunal under section 89.

100. Grounds for declaring election to be void.—(1) If the Tribunal is of opinion—

(*a*) that the election has not been a free election by reason that the corrupt practice of bribery or of undue influence has extensively prevailed at the election ; or

(*b*) that the election has not been a free election by reason that coercion or intimidation has been exercised or resorted to by any particular community, group or section on another community, group or section to vote or not to vote in any particular way at the election ; or

(*c*) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination,

the Tribunal shall declare the election to be wholly void.

Explanation.—In clause (*b*) of this sub-section, the expression "coercion or intimidation" means any interference or attempt to interfere by whatever means with the free exercise of the right to vote or refrain from voting at an election, and includes a social or economic boycott of members of a community, group or section, or threat of such boycott, with intent to interfere with the free exercise of such right by those members.

(2) Subject to the provisions of sub-section (3), if the Tribunal is of opinion—

(*a*) that the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt or illegal practice ; or

(*b*) that any corrupt practice specified in section 123 has been committed by a returned candidate or his agent or by any other person with the connivance of a returned candidate or his agent ; or

(*c*) that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form,

the Tribunal shall declare the election of the returned candidate to be void.

(3) If in the opinion of the Tribunal, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice specified in section 123, but the Tribunal is satisfied—

(*a*) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such currupt practice

was committed contrary to the orders, and without the sanction or connivance, of the candidate or his election agent;

(b) that all such corrupt practices were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt or illegal practices at the election; and

(d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate or any of his agents,

then the Tribunal may decide that the election of the returned candidate is not void.

101. Grounds for which a candidate other than the returned candidate may be declared to have been elected.—If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Tribunal is of opinion—

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt or illegal practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the Tribunal shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

102. Procedure in case of an equality of votes.—If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of those candidates to be declared elected, then—

(a) any decision made by the Returning Officer under the provisions of this Act shall, in so far as it determines the question between those candidates, be effective also for the purposes of the petition; and

(b) in so far as that question is not determined by such a decision, the Tribunal shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote.

103. Communication of orders to the Election Commission and the transmission of the records of the case.—The Tribunal shall, after announcing the orders made under sections 98 and 99, send a copy thereof to the Election Commission and the records of the case to the district judge of the district within which the place of trial appointed under section 88 is situate, or if such place is in a presidency-town, to the chief judge of the court of small causes having jurisdiction there, as the case may be.

104. Difference of opinion among the members of the Tribunal.—If during the trial of an election petition there is a difference of opinion among the members of the Tribunal on any matter or if at the conclusion of such trial there is a difference of opinion among them on any question regarding the orders to be made under section 98 or section 99, the opinion of the majority shall prevail, and the orders of the Tribunal shall be expressed in terms of the views of the majority.

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105. Orders of the Tribunal to be final and conclusive.—Every order of the Tribunal made under this Act shall be final and conclusive.

106. Transmission of order to the appropriate authority, etc., and its publication.—As soon as may be after the receipt of any order made by the Tribunal under section 98 or section 99, the Election Commission shall forward copies of the order to the appropriate authority and, in the case where such order relates to an election (other than a primary election) to a House of Parliament or to an election to the House or a House of the Legislature of a State, also to the Speaker or Chairman, as the case may be, of the House concerned, and shall cause the order to be published in the *Gazette of India* and in the Official Gazette of the State concerned.

107. Orders to take effect only on publication.—An order of the Tribunal under section 98 or section 99 shall not take effect until it is published in the *Gazette of India* under section 106.

CHAPTER IV

Withdrawal and abatement of election petitions.

108. Withdrawal of petitions before appointment of Tribunal.—An election petition may be withdrawn only by leave of the Election Commission if an application for its withdrawal is made before any Tribunal has been appointed for the trial of such petition.

109. Withdrawal of petitions after appointment of Tribunal.—(1) Where an application for withdrawal of an election petition is made after a Tribunal has been appointed for the trial of such petition, the election petition may be withdrawn only by leave of the Tribunal.

(2) Where an application for withdrawal is made under sub-section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Official Gazette.

110. Procedure for withdrawal of petitions before the Election Commission or the Tribunal.—(1) If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners.

(2) No application for withdrawal shall be granted if in the opinion of the Election Commission or of the Tribunal, as the case may be, such application has been induced by any bargain or consideration which ought not to be allowed.

(3) If the application is granted:—

(*a*) the petitioner shall where the application has been made to the Tribunal, be ordered to pay the costs of the respondents theretofore incurred or such portion thereof as the Tribunal may think fit;

(*b*) notice of the withdrawal shall be published in the Official Gazette by the Election Commission or by the Tribunal, as the case may be;

(*c*) a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions of section 117 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Tribunal may think fit.

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111. Report of withdrawal by the Tribunal to the Election Commission.—When an application for withdrawal is granted by the Tribunal and no person has been substituted as petitioner under clause (*c*) of sub-section (3) of section 110, in place of the party withdrawing, the Tribunal shall report the fact to the Election Commission.

112. Abatement of election petitions.—An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

113. Abatement of petition before appointment of Tribunal.—If an election petition abates under section 112 before a Tribunal has been appointed for the trial of the petition, notice of the abatement shall be published in the Official Gazette by the Election Commission.

114. Abatement of petition after appointment of Tribunal.—Where an election petition abates under section 112 after a Tribunal has been appointed for the trial of the petition, notice of the abatement shall be published in the Official Gazette by the Tribunal.

115. Substitution on death of petitioner.—After a notice of the abatement of an election petition is published under section 113 or section 114, any person who might himself have been a petitioner may, within fourteen days of such publication, apply to the substituted as petitioner and upon compliance with the conditions of section 117 as to security shall be entitled to be so substituted and to continue the proceedings upon such terms as the Tribunal may think fit.

116 Abatement or substitution on death of respondent.—If before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition, the Tribunal shall cause notice of such event to be published in the Official Gazette, and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the Tribunal may think fit.

CHAPTER V

Costs and security for costs.

117. Deposit of security.—The petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition.

118. Further security for costs.—During the course of the trial of an election petition the Tribunal may at any time call upon the petitioner to give such further security for costs as it may direct, and may, if he fails to do so, dismiss the petition.

119. Security for costs from a respondent.—No person shall be entitled to be joined as a respondent under sub-section (1) of section 90 unles he has given such security for costs as the Tribunal may direct.

120. Costs.—(1) Costs including pleaders' fees shall be in the discretion of the Tribunal.

(2) The Tribunal may allow interest on costs at a rate not exceeding three *per cent per annum*, and such interest shall be added to the costs.

121. Payment of costs out of security deposits and return of such deposits.—(1) If in any order as to costs under the provisions of this Part there is a direction for payment of costs by any party to any person, such costs shall, if they have

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not been already paid, be paid in full, or so far as possible, out of the security deposit and the further security deposit, if any, made by such party under this Part, on an application made in writing in that behalf within a period of six months from the publication of such order under section 106 to the Election Commission by the person in whose favour the costs have been awarded.

(2) If there is any balance left of any of the said security deposits after payment under sub-section (1) of the costs referred to in that sub-section, such balance, or where no costs have been awarded or no application as aforesaid has been made within the said period of six months, the whole of the said security deposits, may on an application made in that behalf in writing to the Election Commission by the person by whom the deposits have been made, or if such person dies after making such deposits, by the legal representative of such person, be returned to the said person or to his legal representative, as the case may be.

122. Execution of orders as to costs.—Any order as to costs under the provisions of this Part may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or where such place is within a presidency-town, before the court of small causes having jurisdiction there, and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit :

Provided that where any such costs or any portion thereof may be recovered by an application made under sub-section (1) of section 121, no application shall lie under this section within a period of six months from the date of publication of such order under section 106 unless it is for the recovery of the balance of any costs which has been left unrealised after an application has been made under that sub-section owing to the insufficiency of the amount of the security deposits referred to in that sub-section.

PART VII

CORRUPT AND ILLEGAL PRACTICES AND ELECTORAL OFFENCES

CHAPTER I

Corrupt practices.

123. Major corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act :—

(1) Bribery, that is to say, any gift, offer or promise by a candidate or his agent, or by any other person within the connivance of a candidate or his agent, of any gratification to any person whomsoever, with the object, directly or indirectly, of inducing—

(*a*) a person to stand or not to stand as, or to withdraw from being, a candidate at an election ; or

(*b*) an elector to vote or refrain from voting at an election,

or as a reward to—

(*i*) a person for having so stood or not stood, or for having withdrawn his candidature ; or

(*ii*) an elector for having voted or refrained from voting.

Explanation.—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for

reward; but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election and duly entered in the return of election expenses referred to in section 76.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, with the free exercise of any electoral right:

Provided that—

(*a*) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate, or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community: or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause:

(*b*) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a ballot paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person for a ballot paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote.

(4) The removal of a ballot paper from the polling station during polling hours by a candidate or his agent, or by any other person with the connivance of a candidate or his agent.

(5) The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(6) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the connivance of a candidate or his agent for the conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to or from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under the clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going

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to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise.

(7) The incurring or authorising by a candidate or his agent of expenditure or the employment of any person by a candidate or his agent, in contravention of this Act or of any rule made thereunder.

(8) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person.

Explanation.—For the purposes of this clause—

(*a*) a person serving under the Government of India shall not include any person who has been declared by the Central Government to be a person to whom the provisions of this clause shall not apply ;

(*b*) a person serving under the Government of any State shall include a patwari, chaukidar, dafedar, zaildar, shanbagh, karnam, talati, talari, patil, village munsif, village headman or any other village officer, by whatever name he is called, employed in that State, whether the office he holds is a whole-time office or not, but shall not include any person (other than any such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply.

124. Minor corrupt practices.—The following shall also be deemed to be corrupt practices for the purposes of this Act :—

(1) Any act specified in clauses (1) to (8) of section 123, when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent.

(2) The application by a person at an election for a ballot paper in the name of any other person, whether living or dead, or in a fictitious name, or for a ballot paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled vote.

(3) The receipt of, or agreement to receive, any gratification whether as a motive or a reward—

(*a*) by a person for standing or not standing as, or for withdrawing from being, a candidate ; or

(*b*) by any person whomesoever for himself or any other person for voting or refraining from voting, or for inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw his candidature.

Explanation.—For the purposes of this clause the term "gratification" has the same meaning as it has for the purposes of clause (1) of section 123.

(4) The making of any return of election expenses which is false in any material particular, or the making of a declaration verifying any such return.

(5) The systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious and national symbols, such as, the national flag and the national emblem, for the furtherance of the prospects of a candidate's election.

CHAPTER II

Illegal practices

125. Illegal practices.—The following shall be deemed to be illegal practices for the purposes of this Act :—

(1) The incurring or authorisation by any person other than a candidate or his agent of expenses on account of holding any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever, for the purpose of promoting or procuring the election of the candidate, unless he is authorised in writing so to do by the candidate.

Explanation.—Any such expenses as aforesaid incurred or authorised by any institution or organisation for the furtherance of the prospects of the election of a candidate supported by such institution or organisation shall not be deemed to be expenses incurred or authorised within the meaning of this clause.

(2) The hiring, using or letting, as a committee room or for the purpose of any meeting to which electors are admitted, of any building, room or other place where intoxicating liquor is sold to the public.

(3) The issuing of any circular, placard or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof.

CHAPTER III

Electoral offences.

126. Prohibition of public meetings on the election day.—(1) No person shall convene, hold or attend any public meeting within any constituency on the date or dates on which a poll is taken for an election in that constituency.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to two hundred and fifty rupees.

127. Disturbances at election meetings.—(1) Any person who at a public meeting to which this section applies acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, shall be punishable with fine which may extend to two hundred and fifty rupees.

(2) This section applies to any public meeting of a political character held in any constituency between the date of the issue of a notification under this Act calling upon the constituency to elect a member or members and the date on which such election is held.

(3) If any police officer reasonably suspects any person of committing an offence under sub-section (1), he may, if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name and address, or if the police officer reasonably suspects him of giving a false name or address, the police officer may arrest him without warrant.

128. Maintenance of secrecy of voting.—(1) Every officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who contravenes the provisions of sub-section (1) shall be ishable with imprisonment for a term which may extend to three months or ı fine or with both.

129. Officers, etc. at elections not to act for candidates or to influence ng.—(1) No person who is a Returning Officer, or an Assistant Returning ;er, or a presiding or polling officer at an election, or an officer or clerk ɔinted by the Returning Officer or the presiding officer to perform any duty onnection with an election shall in the conduct or the management of the tion do any act (other than the giving of vote) for the furtherance of the ;pects of the election of a candidate.

(2) No such person as aforesaid, and no member of a police force, shall eavour—

(*a*) to persuade any person to give his vote at an election, or

(*b*) to dissuade any person from giving his vote at an election, or

(*c*) to influence the voting of any person at an election in any manner.

(3) Any person who contravenes the provisions of sub-section (1) or sub-ion (2) shall be punishable with imprisonment which may extend to six months ;ith fine or with both.

130. Prohibition of canvassing in or near polling stations.—(1) No person l, on the date or dates on which a poll is taken at any polling station, commit of the following acts within the polling station or in any public or private :e within a distance of one hundred yards of the polling station, namely :—

(*a*) canvassing for votes ; or

(*b*) soliciting the vote of any elector ; or

(*c*) presuading any elector not to vote for any particular candidate ; or

(*d*) persuading any elector not to vote at the election ; or

(*e*) exhibiting any notice or sign (other than an official notice) relating to the election.

(2) Any person who contravenes the provisions of sub-section (1) shall be ishable with fine which may extend to two hundred and fifty rupees.

(3) An offence punishable under this section shall be cognizable.

131. Penalty for disorderly conduct in or near polling stations.—(1) No ;on shall, on the date or dates on which a poll is taken at any polling station,—

(*a*) use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loud speaker, or

(*b*) shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof,

ıs to cause annoyance to any person visiting the polling station for the poll, or ıs to interfere with the work of the officers and other persons on duty at the ing station.

(2) Any person who contravenes, or wilfully aids or abets the contravention the provisions of sub-section (1) shall be punishable with imprisonment which ; extend to three months or with fine or with both.

(3) If the presiding officer of a polling station has reason to believe that any son is committing or has committed an offence punishable under this section, he ; direct any police officer to arrest such person, and thereupon the police officer ll arrest him.

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(4) Any police officer may take such steps, and use such force, as may be reasonably necessary for preventing any contravention of the provisions of sub-section (1), and may seize any apparatus used for such contravention.

132. Penalty for misconduct at the polling station.—(1) Any person who during the hours fixed for the poll at any polling station misconducts himself or fails to obey the lawful directions of the presiding officer may be removed from the polling station by the presiding officer or by any police officer on duty or by any person authorised in this behalf by such presiding officer.

(2) The powers conferred by sub-section (1) shall not be exercised so as to prevent any elector who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

(3) If any person who has been so removed from a polling station re-enters the polling station without the permission of the presiding officer, he shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

(4) An offence punishable under sub-section (3) shall be cognizable.

133. Penalty for illegal hiring or procuring of conveyances at elections.—If any person is guilty of any such corrupt practice as is specified in clause (6) of section 123 at or in connection with an election, he shall be punishable with fine which may extend to two hundred and fifty rupees.

134. Breaches of official duty in connection with elections.—(1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.

(2) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(3) The persons to whom this section applies are the Electoral Registration Officers, Returning Officers, Assistant Returning Officers, presiding officers, polling officers and any other person appointed to perform any duty in connection with the preparation of an electoral roll, the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression "official duty" shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act or by or under the Representation of the People Act, 1950 (XLIII of 1950).

135. Removal of ballot papers from polling station to be an offence.—(1) Any person who at any election fraudulently takes, or attempts to take, a ballot paper out of a polling station, or wilfully aids or abets the doing of any such act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

(2) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under sub-section (1), such officer may, before such person leaves the polling station, arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer:

Provided that when it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(3) Any ballot paper found upon the person arrested on search shall be made over for safe custody to a police officer by the presiding officer, or when the search is made by a police officer, shall be kept by such officer in safe custody.

(4) An offence punishable under sub-section (1) shall be cognizable.

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136. Other offences and penalties therefor.—(1) A person shall be guilty of an electoral offence if at any election he—

(*a*) fraudulently defaces or fraudulently destroys any nomination paper; or

(*b*) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of a Returning Officer; or

(*c*) fraudulently defaces or fraudulenty destroys any ballot paper or the official mark on any ballot paper or any declaration of identity or official envelope used in connection with voting by postal ballot; or

(*d*) without due authority supplies any ballot paper to any person; or

(*e*) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or

(*f*) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purposes of the election; or

(*g*) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts.

Any person guilty of an electoral offence under this section shall—

(*a*) if he is a Returning Officer or an Assistant Returning Officer or a presiding officer at a polling station or any other officer or clerk employed on official duty in connection with the election, be punishable with imprisonment for a term which may extend to two years or with fine or with both;

(*b*) if he is any other person, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(3) For the purposes of this section, a person shall be deemed to be on official duty if his duty is to take part in the conduct of an election or part of an election including the counting of votes or to be responsible after an election for the used bollat papers and other documents in connection with such election, but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act or by or under the Representation of the People Act, 1950 (XLIII of 1950).

(4) An offence punishable under clause (*b*) of sub-section (2) shall be cognizable.

137. Prosecution regarding certain offences.—(1) If the Election Commission or a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State has reason to believe that any affence punishable under section 129, or under section 134 or under clause (*a*) of sub-section (2) of section 136 has been committed in reference to any election within a State, it shall be the duty of the Election Commission, the Regional Commissioner or the Chief Electoral Officer, as the case may be, to cause such inquiries to be made and such prosecutions to be instituted as the circumstances of the case may appear to it or him to require.

(2) No court shall take cognizance of any offence punishable under section 129 or under section 134 or under clause (*a*) of sub-section (2) of section 136 unless there is a complaint made by order of, or under authority from, the Election Commission or a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State concerned.

138. Amendment of Act V of 1898.—In the Code of Criminal Procedure, 1898—

(*a*) in section 196, after the word and figures "section 127", the words, figures and letter "and section 171-F, so far as it relates to the offence of personation" shall be inserted;

(*b*) in Schedule II—

(*i*) in the entry relating to section 171-F of the Indian Penal Code (Act XLV of 1860) from the paragraph in column 2, the words "and personation" shall be omitted;

(*ii*) after the paragraph in column 2 of the said entry as so amended, the following paragraph shall be inserted, namely :—

"Personation at an election.";

(*iii*) in column 3, opposite the paragraph inserted by sub-clause (ii), the following paragraph shall be inserted namely :—

"May arrest without warrant.";

(*iv*) in columns 4, 5, 6, 7 and 8, opposite the paragraph inserted by sub-clause (ii), the word "Ditto" shall be inserted;

(*v*) in the entry relating to section 171-G of the Indian Penal Code, in column 3, for the word "Ditto" the words "shall not arrest without warrant" shall be substituted.

PART VIII

DISQUALIFICATIONS

CHAPTER I

Disqualifications for membership

139. Offences entailing disqualification.—(1) The following offences shall entail disqualification for membership of Parliament and of the Legislature of every State, namely :—

(*a*) offences punishable with imprisonment under section 171E or section 171F of the Indian Penal Code (Act XLV of 1860), and

(*b*) offences punishable under section 135 or clause (*a*) of sub-section (2) of section 136 of this Act.

(2) The period of such disqualification shall be six years from the date of the conviction for the offence.

140. Corrupt and illegal practices entailing disqualification.—(1) The following corrupt or illegal practices relating to elections shall entail disqualification for membership of Parliament and of the Legislature of every State, namely :—

(*a*) corrupt practices specified in section 123 or section 124, and

(*b*) illegal practices specified in section 125.

(2) The period of such disqualification shall be six years in the case of a corrupt practice, and four years in the case of an illegal practice, counting from the date on which the finding of the Election Tribunal as to such practice takes effect under this Act.

CHAPTER II

Disqualifications for voting

141. Disqualification arising out of conviction and corrupt practices.—If any person after the commencement of this Act—

(*a*) is convicted of an offence punishable with imprisonment under section 171E or section 171F of the Indian Penal Code (Act XLV of 1860), or of

an offence punishable under section 135 or clause (*a*) of sub-section (2) of section 136 of this Act, or

(*b*) is, upon the trial of an election petition under Part VI, found guilty of any corrupt practice,

he shall, for a period of six years from the date of the conviction or from the date on which such finding takes effect, be disqualified for voting at any election.

142. Disqualification arising out of illegal practices.—If, in relation to any election, any person is, upon the trial of an election petition under Part VI found guilty of any illegal practice, he shall be disqualified for voting at any election for a period of four years from the date on which such finding takes effect.

143. Disqualification arising out of failure to lodge return of election expenses.—If default is made in making the return of the election expenses of any person who has been nominated as a candidate at an election to which the provisions of Chapter VIII of Part V apply, or if such a return is found either upon the trial of an election petition under Part VI or by any court in a judicial proceeding, to be false in any material particular, the candidate and his election agent shall be disqualified for voting at any election for a period of five years from the date by which the return was required to be lodged.

144. Removal of disqualifications.—Any disqualification under this Chapter may be removed by the Election Commission for reasons to be recorded by it in writing.

CHAPTER III

Other Disqualifications

145. Disqualification for being an election agent.—Any person who is for the time being disqualified under the foregoing provisions of this Part for being a member of either House of Parliament or the House or either House of the Legislature of a State or for voting at elections, shall, so long as the disqualification subsists, also be disqualified for being an election agent at any election.

146. Disqualification for holding certain offices.—Any person who—

(*a*) has been convicted of an offence punishable with imprisonment under section 171E or section 171F of the Indian Penal Code (Act XLV of 1860), or of an offence punishable under section 135 or clause (*a*) of sub-section (2) of section 136 of this Act, or

(*b*) has been disqualified from exercising any electoral right for a period of not less than five years on account of any corrupt practices in connection with an election,

shall be disqualified for six years from the date of such conviction or disqualification from—

(*i*) being appointed to, or acting in, any judicial office ;

(*ii*) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached ;

(*iii*) being elected or sitting or voting as a member of any local authority ; or

(*iv*) being appointed or acting as a trustee of a public trust :

Provided that any disqualification under this section may be removed by the Election Commission for reasons to be recorded by it in writing.

PART IX

By-elections

147. Casual vacancies in the Council of States.—When before the expiration of the term of office of a member elected to the Council of States, his seat becomes vacant or is declared vacant or his election to the Council of States is declared void, the Election Commission shall by a notification in the *Gazette of India* call upon the elected members of the Legislative Assembly or the members of the electoral college concerned or the elected members of the Coorg Legislative Council, as the case may be, to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

148. Casual vacancies in the electoral colleges for certain Part C States.—When the seat of a member elected to the electoral college for a scheduled Part C State becomes vacant or is declared vacant or his election to such electoral college is declared void, the Election Commission shall, by a notification in the *Gazette of India*, call upon the Council of States constituency concerned to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

149. Casual vacancies in the House of the People.—(1) When the seat of a member elected to the House of the People becomes vacant or is declared vacant or his election to the House of the People is declared void, the Election Commission shall, subject to the provisions of sub-section (2), by a notification in the *Gazette of India*, call upon the Parliamentary constituency concerned to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

(2) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the Scheduled Castes or for any Scheduled Tribes, the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the Scheduled Castes or to such Scheduled Tribes, as the case may be.

150. Casual vacancies in the State Legislative Assemblies.—(1) When the seat of a member elected to the Legislative Assembly of a State becomes vacant or is declared vacant or his election to the Legislative Assembly is declared void, the Election Commission shall, subject to the provisions of sub-section (2), by a notification in the Official Gazette, call upon the Assembly constituency concerned to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

(2) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the Scheduled Castes or for any Scheduled Tribes, the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the Scheduled castes or to such Scheduled Tribes, as the case may be.

151. Casual vacancies in the State Legislative Councils.—When before the expiration of the term of office of a member elected to the Legislative Council of a State, his seat becomes vacant or is declared vacant or his election to the Legislative Council is declared void, the Election Commission shall, by a notification in the Official Gazette, call upon the Council constituency concerned

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or the members of the Legislative Assembly of the State, as the case may be, to elect a person for the purpose of filling the vacancy so caused, before such date as may be specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

PART X

MISCELLANEOUS

152. List of members of the State Legislative Assemblies and electoral colleges and of elected members of the Coorg Legislative Council to be maintained by the Returning Officers concerned.—(1) The Returning Officer for an election by the elected members of the Legislative Assembly of a State to fill a seat or seats in the Council of States or for an election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State shall, for the purposes of such election, maintain in his office in the prescribed manner and form a list of elected members or a list of members, as the case may be, of that Legislative Assembly.

(2) The Returning Officer for an election by the members of the electoral college for a Part C State or group of such States or by the elected members of the Coorg Legislative Council to fill a seat or seats in the Council of States shall, for the purposes of such election, maintain in his office in the prescribed manner and form a list of members of that electoral college or a list of elected members of the Coorg Legislative Council, as the case may be.

(3) Copies of the lists referred to in sub-sections (1) and (2) shall be made available for sale.

153. Extension of time for completion of election.—(1) It shall be competent for the Election Commission for reasons which it considers sufficient to extend the time appointed by such Commission under the provisions of sub-section (1) or sub-section (2) of section 12, or section 13, or section 15, or section 17 or sub-section (1) or sub-section 2 of section 18 or under any of the provisions of Part IX for the completion of any election.

(2) When the time for the completion of any election is so extended, the President or the Governor or Rajpramukh of the State or the Election Commission, as the case may be, shall by notification in the Official Gazette make the necessary amendments in the notification issued in respect of such election under any of the provisions referred to in sub-section (1).

154. Term of office of members of the Council of States.—(1) The term of office of a member elected to fill the seat in the Council of States to be filled by the representative of the States of Ajmer and Coorg and of a member elected to fill the seat in that Council to be filled by the representative of the States of Manipur and Tripura, other than a member chosen to fill a casual vacancy in either of those seats, shall be two years.

(2) Subject as aforesaid, the term of office of a member of the Council of States, other than a member chosen to fill a casual vacancy, shall be six years, but upon the first constitution of the Council of States the President shall, after consultation with the Election Commission, make by order such provision as he thinks fit for curtailing the term of office of some of the members then chosen in order that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter.

(3) A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

155. Commencement of the term of office of members of the Council of States.—(1) The term of office of a member of the Council of States whose name is required to be notified in the Official Gazette under section 71 shall begin on the date of such notification.

(2) The term of office of a member of the Council of States whose name is not required to be notified under section 71 shall begin on the date of publication in the Official Gazette of the declaration containing the name of such person as elected under section 67 or of the notification issued under sub-clause (*a*) of clause (1) of article 80 or under any other provision announcing the nomination of such person to the Council of States, as the case may be.

156. Term of office of members of State Legislative Councils.—(1) The term of office of a member of the Legislative Council of a State, other than a member chosen to fill a casual vacancy, shall be six years, but upon the first constitution of the Council the Governor or the Rajpramukh, as the case may be, shall, after consultation with the Election Commission, make by order such provision as he thinks fit for curtailing the term of office of some of the members then chosen in order that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter.

(2) A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

157. Commencement of the term of office of members of the Legislative Councils.—(1) The term of office of a member of the Legislative Council of a State whose name is required to be notified in the Official Gazette under section 75 shall begin on the date of such notification.

(2) The term of office of a member of the Legislative Council of a State whose name is not required to be notified under section 75 shall begin on the date of publication in the Official Gazette of the declaration containing the name of such person as elected under section 67 or of the notification issued under sub-clause (*e*) of clause (3) of article 171, announcing the nomination of such person to the Council, as the case may be.

158. Return or forfeiture of deposits.—(1) If a candidate by whom or on whose behalf the deposit referred to in section 34 or in that section read with sub-section (4) of section 39 has been made withdraws his candidature in the manner and within the time specified in sub-section (1) of section 37 or in that sub-section read with the said sub-section (4), or if the nomination of any such candidate is rejected, the deposit shall be returned to the person by whom it was made and, if any candidate dies before the commencement of the poll, any such deposit, if made by him, shall be returned to his legal representative or, if not made by the candidate, shall be returned to the person by whom it was made.

(2) If a candidate nominated under section 32 by whom or on whose behalf a deposit has been made under section 34 is not elected, and the number of votes polled by him does not exceed one-sixth of the total number of votes polled or, in the case of a constituency returning more than one member, one-sixth of the total number of votes polled divided by the total number of members to be elected, the deposit shall be forfeited to the appropriate authority.

(3) For the purpose of sub-section (2), the number of votes polled shall be deemed to be the number of ballot papers, other than rejected ballot papers, counted.

(4) The deposit made by or on behalf of a candidate under section 34 or under that section read with sub-section (4) of section 39 shall, where it is not

forfeited under sub-section (2), be returned to such candidate or to the person who has made the deposit on his behalf, as the case may be, after the publication of the result of the election in the Official Gazette :

Provided that if a candidate is duly nominated at a general election in more than one Parliamentary constituency or Council of States constituency or Assemby constituency, not more than one of the deposits made by him or on his behalf shall be returned, and the remainder shall be forfeited to the appropriate authority :

Provided further that if a candidate is duly nominated at an election in more than one Council constituency or at an election in a Council constituency and an election by the members of the State Legislative Assembly to fill seats in the State Legislative Council, not more than one of the deposits made by him or on his behalf shall be returned, and the remainder shall be forfeited to the State Government.

159. Staff of every local authority to be made available for election work.—Every local authority in a State shall, when so requested by the Election Commission or a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State, make available to any Returning Officer such staff as may be necessary for the performance of any duties in connection with an election.

160. Requisitioning of premises, vehicles, etc., for election purposes.—(1) If it appears to the State Government that in connection with an election held within the State—

(*a*) any premises are needed or are likely to be needed for the purpose of being used as a polling station or for the storage of ballot boxes after a poll has been taken, or

(*b*) any vehicle, vessel or animal is needed or is likely to be needed for the purpose of transport of ballot boxes to or from any polling station, or transport of members of the police force for maintaining order during the conduct of such election, or transport of any officer or other person for performance of any duties in connection with such election,

that Government may by order in writing requisition such premises, or such vehicle, vessel or animal, as the case may be, and may make such further orders as may appear to it to be necessary or expedient in connection with the requisitioning :

Provided that no vehicle, vessel or animal which is being lawfully used by a candidate or his agent for any purpose connected with the election of such candidate shall be requisitioned under this sub-section until the completion of the poll at such election.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the State Government to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(3) Whenever any property is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section.

(4) In this section—

(*a*) "premises" means any land, building or part of a building and includes a hut, shed or other structure or any part thereof;

(b) "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise.

161. Payment of compensation.—(1) Whenever in pursuance of section 160 the State Government requisitions any premises, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely :—

(i) the rent payable in respect of the premises or if no rent is so payable, the rent payable for similar premises in the locality ;

(ii) if in consequence of the requisition of the premises the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change :

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the State Government for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the State Government may determine :

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the State Government to an arbitrator appointed in this behalf by that Government for determination, and shall be determined in accordance with the decision of such arbitrator.

Explanation.—In this sub-section, the expression 'person interested' means the person who was in actual possession of the premises requisitioned under section 160 immediately before the requisition, or where no person was in such actual possession, the owner of such premises.

(2) Whenever in pursuance of section 160 the State Government requisitions any vehicle, vessel or animal, there shall be paid to the owner thereof compensation the amount of which shall be determined by the State Government on the basis of the fares or rates prevailing in the locality for the hire of such vehicle, vessel or animal :

Provided that where the owner of such vehicle, vessel or animal being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the State Government for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the State Government may determine :

Provided further that where immediately before the requisitioning the vehicle or vessel was by virtue of a hire purchase agreement in the possession of a person other than the owner, the amount determined under this sub-section as the total compensation payable in respect of the requisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by the State Government in this behalf may decide.

162. Power to obtain information.—The State Government may, with a view to requisitioning any property under section 160 or determining the compensation payable under section 161, by order, require any person to furnish to such authority as may be specified in the order such information in his possession relating to such property as may be so specified.

163. Powers of entry into and inspection of premises, etc.—(1) Any person authorised in this behalf by the State Government may enter into any premises and inspect such premises and any vehicle, vessel or animal therein for the purpose of determining whether, and if so in what manner, an order under section 160 should be made in relation to such premises, vehicle, vessel or

animal or with a view to securing compliance with any order made under that section.

(2) In this section, the expressions "premises" and "vehicle" have the same meanings as in section 160.

164. Eviction from requisitioned premises.—(1) Any person remaining in possession of any requisitioned premises in contravention of any order made under section 160 may be summarily evicted from the premises by any officer empowered by the State Government in this behalf.

(2) Any officer so empowered may, after giving to any woman not appearing in public reasonable warning and facility to withdraw, remove or open any lock or bolt or break open any door of any building or do any other act necessary for effecting such eviction.

165. Release of premises from requisition.—(1) When any premises requisitioned under section 160 are to be released from requisition, the possession thereof shall be delivered to the person from whom possession was taken at the time when the premises were requisitioned, or if there were no such person, to the person deemed by the State Government to be the owner of such premises, and such delivery of possession shall be a full discharge of the State Government from all liabilities in respect of such delivery, but shall not prejudice any rights in respect of the premises which any other person may be entitled by due process of law to enforce against the person to whom possession of the premises is so delivered.

(2) Where the person to whom possession of any premises requisitioned under section 160 is to be given under sub-section (1) cannot be found or is not readily ascertainable or has no agent or any other person empowered to accept delivery on his behalf, the State Government shall cause a notice declaring that such premises are released from requisition to be affixed on some conspicuous part of such premises and publish the notice in the Official Gazette.

(3) When a notice referred to in sub-section (2) is published in the Official Gazette, the premises specified in such notice shall cease to be subject to requisition on and from the date of such publication and be deemed to have been delivered to the person entitled to possession thereof, and the State Government shall not be liable for any compensation or other claim in respect of such premises for any period after the said date.

166. Delegation of functions of the State Government with regard to requisitioning.—The State Government may, by notification in the Official Gazette, direct that any powers conferred or any duty imposed on that Government by any of the provisions of sections 160 to 165 shall, under such conditions, if any, as may be specified in the direction, be exercised or discharged by such officer or class of officers as may be so specified.

167. Penalty for contravention of any order regarding requisitioning.—If any person contravenes any order made under section 160 or section 162, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

168. Special provisions with respect to Rulers of former Indian States.—(1) If the Ruler of a former Indian State is nominated as a candidate for any election under this Act, the provisions of sub-section (1) of section 87-B of the Code of Civil Procedure, 1908 (Act V of 1908) and of sub-sections (2) and (3) of section 197-A of the Code of Criminal Procedure, 1898 (Act V of 1898), shall not apply in relation to such Ruler during the period commencing on the date of his nomination as such candidate and ending on the date on which the result of the election is published under section 67, and shall not apply thereafter in relation to any proceedings for questioning the validity or regularity of such election under Part VI of this Act or in relation to any criminal

proceedings against such Ruler for any offence under Chapter IX-A of the Indian Penal Code (Act XLV of 1860) or Chapter III of Part VII of this Act alleged to have been committed by him at or in connection with such election.

(2) In this section—

(a) "candidate" has the same meaning as in section 79;

(b) "former Indian State" means any such Indian State as the Central Government may, by notification in the Official Gazette, specify for the purposes of this section;

(c) "Ruler", in relaton to a former Indian State, means the person who for the time being is recognised by the President as the Ruler of that State for the purposes of the Constitution.

PART XI

General

169. Power to make rules.—(1) The Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the duties of presiding officers and polling officers at polling stations;

(b) the checking of voters by reference to the electoral roll;

(c) the manner in which votes are to be given both generally and in the case of illiterate voters or voters under physical or other disability;

(d) the manner in which votes are to be given by a presiding officer, polling officer, polling agent or any other person, who being an elector for a constituency is authorised or appointed for duty at a polling station at which he is not entitled to vote;

(e) the procedure to be followed in respect of the tender of vote by a person representing himself to be an elector after another person has voted as such elector;

(f) the procedure as to voting to be followed at elections held in accordance with the system of proportional representation by means of the single transferable vote;

(g) the scrutiny and counting of votes including cases in which a recount of the votes may be made before the declaration of the result of the election;

(h) the safe custody of ballot boxes, ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers;

(i) any other matter required to be prescribed by this Act.

170. Jurisdiction of civil courts barred.—No civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election.

171. Repeal of Act XXXIX of 1920.—The Indian Elections Offences and Inquiries Act, 1920, is hereby repealed:

Provided that such repeal shall not affect any inquiry in respect of an election to fill any casual vacancy referred to in clause (1) or clause (2) of article 388 by an

Election Tribunal appointed for that purpose by the Election Commission, and the provisions of the said Act shall apply in relation to such election and inquiry notwithstanding such repeal subject to any order made by the President under the said clause (1) or clause (2), as the case may be.

K. V. K. SUNDARAM,
Secretary to Government of India.

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